

Comment on Interim Charge 2

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I. Introduction: The Debt Trap

The Texas Fair Defense Project represents hundreds of people each year who are in debt for unaffordable fines and costs. While our clients are disproportionately people of color, single mothers, and people who have disabilities or who provide care to people with disabilities, they come from different backgrounds. There are two things all of our clients have in common: they are all struggling financially, and they desperately want to clear their debt and get back on their feet. None of them are purposefully flouting the law. They simply feel trapped.

For people with access to financial resources, getting a traffic ticket is a pain that can set them back a few hundred dollars. But for many low-income Texans, a traffic ticket costs far more, both in absolute and relative costs. A single traffic stop can easily snowball into thousands of dollars of debt and make it nearly impossible to find and keep a job.

When somebody misses court or misses a payment on their class C ticket, most courts issue a warrant for their arrest and put a hold on their ability to get or renew their driver's license through the OmniBase program.¹ Millions of warrants for class C tickets are issued in Texas each year, and as of 2019, there were over four million OmniBase holds on driver's licenses for unpaid court debt. In addition, under §702.003 and §502.185 of the Transportation Code, many jurisdictions put holds on people's ability to register their vehicles if they have unpaid ticket debt.

People in this situation then face a difficult choice. Even if they get on a payment or community service plan, the holds on their licenses typically will not lift for the entire time they are working off their debt. With most Texans having limited or no access to public transportation, this means that they continue to drive without a valid license to get to work or to their community service site (as well as to the grocery store, children's medical appointments, and more). If they continue to drive, they are likely to be pulled over. This is true for three reasons that make them more susceptible to enforcement: 1) automatic license plate readers can flag whether somebody has warrants for unpaid tickets; 2) many people are unable to register their vehicle if they have unpaid tickets, so they must drive with visibly expired registration; and 3) people who cannot afford to pay their tickets typically live in low-income neighborhoods with a much higher police presence.

Once they are pulled over, two things usually happen: they are arrested, and they receive more tickets, driving them deeper into debt and criminal legal involvement.

After arrest, people can spend long periods of time in jail for their class C tickets, or, if it is the second time they have been caught driving without a valid license, they may also be charged with a class B misdemeanor, which is a jailable offense. Frequently, people are arrested on the warrant, given \$100 of jail

¹ The OmniBase program is found under Chapter 706 of the Transportation Code and is so-called after the private vendor that administers the program, OmniBase Services of Texas. Under the OmniBase program, jurisdictions contract with DPS and the vendor to put holds on the ability to renew or obtain a driver's license. This is a program that is similar to the Driver Responsibility Program in that it takes away driver's licenses due to unpaid debt. However, unlike the Driver Responsibility Program, there is no indigency program whereby a person can get their holds lifted if they show they are indigent. Also unlike the Driver Responsibility Program, OmniBase holds do not automatically lift even if somebody gets on a payment plan and begins making payments. They typically only lift once all the debt, no matter how large, is completely paid off.

credit, and released the next day. Studies show that even short periods of time in jail can completely disrupt people's lives and increase recidivism.² In addition to jail time, people often owe even more upon release.

This is because, at that traffic stop, they received new tickets, including for driving without a valid license, driving with expired registration, and driving without insurance. If they do not pay or appear on these tickets, they may receive additional "violate promise to appear charges," totaling six tickets from a single traffic stop. For each one of these tickets, there are myriad fees that only apply to people who do not pay right away. There is a fee for getting on a payment plan, a fee for getting a warrant, a fee for getting a hold on your driver's license, and a fee equaling an additional 30 percent to your entire balance if a private collection company becomes involved. The end result is that even a single traffic stop can easily cost a low-income person thousands of dollars, undoing any strides toward financial stability they had previously made.

This system creates a permanent underclass of people who cannot get their licenses no matter how hard they try, live in constant fear of arrest and jail, and are perpetually in debt to criminal courts. This cycle of debt, license holds, and jail also disproportionately affects people of color. For example, though Black people make up just 11 percent of licensed drivers, they comprise 29 percent of people with OmniBase holds.³

II. Equity, Appearances, Collection Rates, and Safety – What Works, What Doesn't

Many people get a ticket, realize they can't pay, and simply do not know what to do. Even if they are aware that going to court is an option, they do not see a point in skipping work to do so since they do not have the money to pay. Many are also afraid that they will be arrested if they go to court. People who have lost their licenses under the OmniBase program may also be afraid to drive to court and risk getting additional tickets for driving without a valid license.

Court notices are usually unhelpful and full of confusing legalese. These notices prominently list a plethora of ways to pay (in person, online, by check, by phone, etc.), but the rest is opaque. They do not state that the amount people owe will be waived, reduced, or converted into community service if the person cannot afford to pay. They also do not assure the reader that they will not be arrested if they show up -- even though a law passed last legislative session bans arrest in court for class C warrants.⁴ Worse, notices from private collection companies say that people owe money on tickets that do not even have convictions yet.

As soon as somebody misses a court date, they start to spiral into a cycle of debt, warrants, license holds, and jail. It is in everybody's best interest to increase appearance rates and court outcomes.

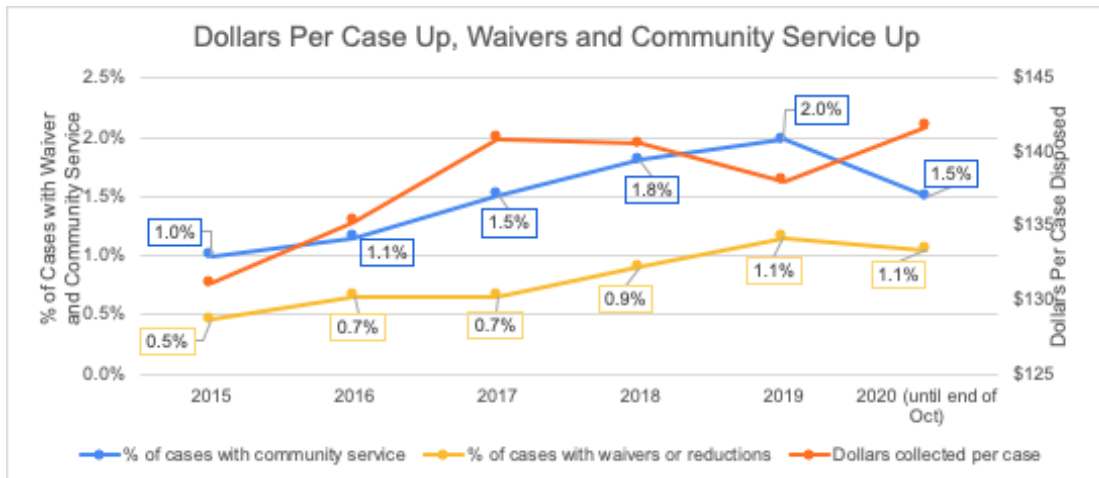
A. What Works: Reductions, Waivers, and Community Service

The Texas Legislature passed important fines and fees reform bills 2017 with SB 1913 (Zaffirini/Thompson) and HB 351 (Canales/Hinojosa) and in 2019 with SB 346 (Zaffirini/Leach). These bills were passed with the goal of reducing jail time and warrants and increasing waivers and community service for class C and other offenses. At the time, there was a fear that these reforms would have a negative fiscal impact. This proved to be untrue.

² Christopher T. Lowenkamp, Ph.D. et al., The Hidden Cost of Pretrial Detention, LJAF 3 (2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

³ Significance tests of these proportions found that the differences for race groups are statistically significant, and not due to chance. Texas Appleseed & Texas Fair Defense Project, Driven By Debt: Dallas, at 6, *available at* <https://www.texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf>.

⁴ This has been true of court notices in nearly every jurisdiction TFDP has practiced in.

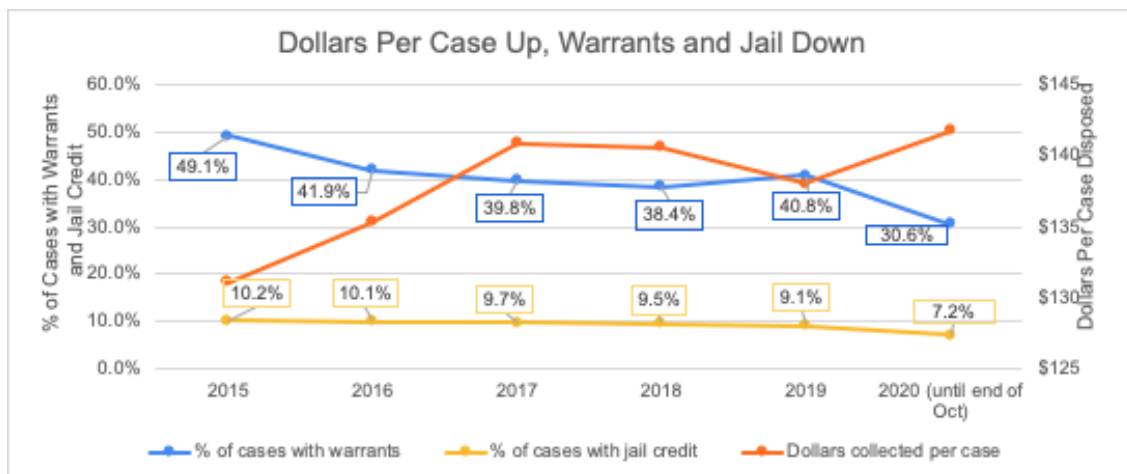


The above chart was made using data that was self-reported by Texas courts to the Office of Court Administration (OCA). It shows that on the whole, as waiver and community service increased, so did the amount of money collected per case. While this may seem counterintuitive at first, it does make sense. Collections per case shouldn't decrease, since people who cannot pay simply cannot pay, no matter what tactics are used by the court. But more importantly, it also makes sense that collections would improve, since those who can pay a little bit are much more likely to come to court and pay whatever they can if they can see a light at the end of the tunnel. The reforms passed by this legislation did offer a small light at the end of the tunnel, in the form expanded access to reductions, waivers, and community service.

But while community service and waivers have generally increased (with the exception of 2020, likely due to court closures due to the pandemic), the overall rates are still incredibly low. Community service is still only used in less than two percent of cases, and waivers and reductions occur in only about one percent of cases. Furthermore, when granting community service, many courts simply convert the total amount that a person owes into community service at a rate of \$12.50 an hour. Because the cycle of debt described above frequently snowballs into tens of thousands of dollars of debt, this can trap people in a community service plan that lasts for years.

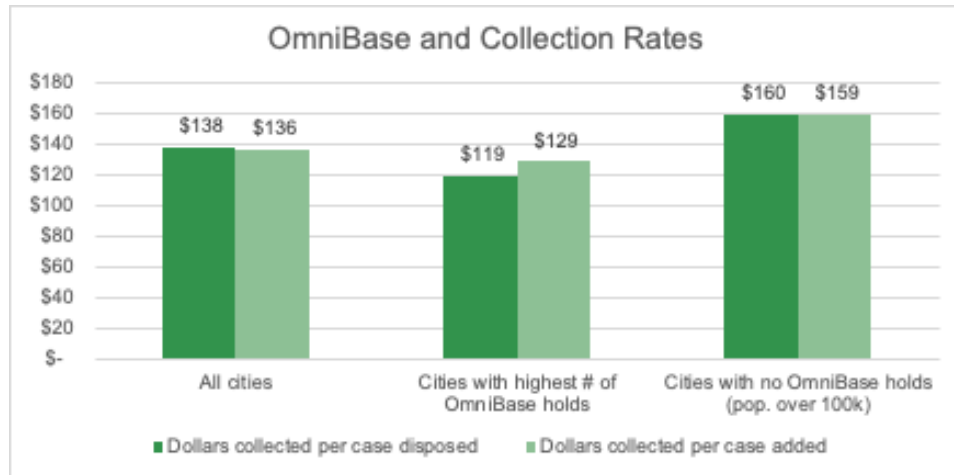
B. What Doesn't Work: Warrants, Jail, and License Holds

Unlike alternative sentencing options, warrants and jail credit have been slowly but steadily declining while collection rates per case have been increasing.



This shows that warrants and jail time do not improve collection rates or encourage people to show up to court. Instead, they drive people further into poverty and criminal legal involvement. In addition to the devastating effects of jail, it can be impossible to find and keep a good job with an active warrant, or even get an apartment. Warrants and jail time also accrue separate significant costs to counties through jail beds and enforcement actions.⁵

In addition, we also can see by looking at the data that taking away a person's driver's license is counterproductive and that there is no evidence that it increases compliance rates. While the OCA does not collect data on general compliance and appearance rates, we can look at the money collected per case disposed and the money collected per case added as a proxy.



As this graph shows, the cities that do not use the OmniBase program collect more money on average, both per case added and per case disposed.⁶ Even though the OmniBase program is advertised as a collection tool, these results are unsurprising. Of the hundreds of clients the Texas Fair Defense Project has represented, OmniBase suspensions never operated to incentivize them to pay tickets they simply couldn't afford. Most people do not even know what an OmniBase hold is. All they know is that no matter how hard they tried, they could not seem to ever get their license back or dig themselves out of debt. Most have given up hope of ever paying off their debt and getting their licenses back before meeting us, and only the prospect of an attorney helping them navigate the complicated system can restore that hope.

For the hundreds of thousands of people who Texas Fair Defense Project does not represent, we need better. We need a system that people can navigate on their own and see a path towards driving legally that will not take months or years or force them to choose between food or rent and a driver's license. Helping people get their licenses back after they've been denied solely due to debt will also make our roads safer, since there will be fewer unlicensed drivers on the road and more people with insurance.

⁵ One important distinction, which unfortunately is not visible in the data provided to the OCA, is the difference between jail credit that arises from jailing people for traffic debt and jail credit that is granted to individuals for time served on separate offenses. The latter type of jail credit is effectively just a different type of debt waiver, and can actually greatly improve outcomes. Unfortunately, because no distinction is made in the OCA data, it is impossible to say what percentage of jail credit is the "good" type of jail credit, and what percentage involves locking people up for non-jailable offenses.

⁶ As of 2019, 88.04% of cities and 98.03% of counties use the OmniBase Program. This chart compares the 16 cities without any OmniBase holds that have a population over 100,000 (Fort Worth, Plano, Lubbock, Garland, Irving, Amarillo, Grand Prairie, McKinney, Frisco, Brownsville, Pasadena, Midland, Denton, Carrollton, Wichita Falls, and San Angelo) with the top 10 users of the OmniBase program that have a population over 100,000 (Houston, Dallas, San Antonio, Laredo, El Paso, Corpus Christi, Leon Valley, Universal City, Galveston, and Odessa) as well as the general collection rates for all cities. OmniBase Data obtained via email from Linda Boline, Senior Manager, Driver License Division, Texas Department of Public Safety, (Dec. 10, 2019).

III. Recommendations

1. Fix the biggest flaws in the OmniBase Program

The OmniBase program, as it currently operates, is broken. Low-income people in the program have no realistic way to escape it. Even if they get on a payment plan or a community service plan, they cannot obtain their license. And if they drive to work or to their community service site, they are likely to get more tickets for driving without a valid license. This completely undermines the stated purpose of the program: encouraging people to come to court and become compliant with their tickets. Because of these problems, many people have had holds for years, or even over a decade.

To fix these obvious flaws, the Legislature should ensure that anybody who comes into compliance gets their holds lifted (just as they also already get their warrants lifted). Coming into compliance can entail getting on a payment plan or a community service plan or pleading not guilty and getting on a docket to see a prosecutor. In addition, the hold should only last for a maximum of ten years, at which point they should expire. These changes have bipartisan support,⁷ as well as the support of the Justice of the Peace and Constable Association.

2. Continue to increase access to waivers, reductions, and community service

Though waivers, reductions, and community service rates have been generally increasing, they are all still extremely rare. Community service is utilized in fewer than two percent of cases, and waivers and reductions occur in only one percent of cases.

The Legislature should pass legislation expanding access to waivers, reductions, and community service. Notices should prominently display clear information about those options. If somebody has served time for another offense, that time should be credited towards the balance in all cases. Furthermore, jurisdictions should have more discretion to administratively close cases that they deem uncollectible.

3. Make sure payment plans and community service plans do not last forever

As noted above, people who have lost their licenses can easily accumulate thousands, or even tens of thousands, of dollars in court debt. If somebody in this situation comes to court to get on a low payment plan or on a community plan at a rate of \$12.50 an hour, they could end up working off their debt for many months or years. To solve this problem, the legislation should be passed ensuring that payment plans and community service plans for class C tickets only last a maximum of six months. Upon successful completion of the six-month plans, the remaining balance should be waived.

4. Stop arrests for citable offenses, including class C tickets

As noted above, the effects of jail can be devastating, even for short periods of time. This is especially true during a pandemic, when COVID-19 is spreading through correctional facilities like wildfire and medical professionals are having a hard time treating all detainees for anything, including non-COVID-related illnesses.

There are a number of offenses, including class C offenses, that the Legislature has already decided are not serious enough to necessitate arrest. In the upcoming session, the Legislature should take this a step further and pass some version of HB 2754 (White), expanding cite-and-release and ending non-warrant arrests for the lowest-level offenses.

⁷ The Texas Public Policy Foundation (TPPF) and the American Legislative Exchange Council (ALEC) both support ending license holds for debt, including the OmniBase program. TPPF discusses its opposition to the OmniBase Program on its website, at <https://www.texaspolicy.com/court-fees-and-fines-unjustly-burden-debtors/>. ALEC has adopted a resolution opposing all license holds and suspensions that are not directly related to public safety offenses. The resolution specifically notes that “in Texas some 1,800,000 people, have had their driver’s licenses suspended for failure to pay court fines and fees,” a statistic that includes hundreds of thousands of OmniBase holds. See ALEC Resolution, available at <https://www.alec.org/model-policy/resolution-in-support-of-limiting-drivers-license-suspensions-to-violations-that-involve-dangerous-driving/>. (This was adopted before the repeal of the Driver Responsibility Program last session.)